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UNITED STATES DISTRICT COURT
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Attorney for Plaintiff TRICOR AMERICA, INC.
Laura Each Nguyen, SBN 203141 Law Offices of Laura D. Each, PC 5776 Lindero Canyon Rd., D-233 Westlake Village, CA 91362 Telephone: (818) 665-4083 Fax: (818) 206-3230
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NORTHERN DISTRICT OF CALIFORNIA

DAMAGES FOR: FIRST AMENDED COMPLAINT FOR

1. Breach of Contract

3. Quantum Meruit 2. Account Stated

Case No.: C07 4949 CRB

4. Negligent Misrepresentation

corporation, TRICOR AMERICA, INC., a California

Plaintiffs,

Defendants.

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COMPANY, INC., a Canadian corporation; and corporation; LOOMIS CANADA HOLDING DHL CANADA EXPRESS, LTD. a Canadian

DOES I though 25, inclusive. LI

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California and the County of Orange, and is in good standing with the Secretary of State of the virtue of the laws of the State of California, and is qualified to do business in the State of

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FIRST AMENDED COMPLAINT FOR DAMAGES

Case 3:07-cv-04949-CRB

Document 6

Plaintiff TRICOR is a corporation duly organized and existing under and by

Plaintiff TRICOR AMERICA, INC. (hereinafter referred to as "TRICOR"), for causes of

CENERAL ALLEGATIONS

Filed 11/27/2007

action against defendants and each of them alleges as follows:

Page 1 of 13

- 2. Plaintiff is informed and believes, and thereupon alleges, that defendant DHL EXPRESS (CANADA), LTD. (hereinafter referred to as "DHL EXPRESS") is corporation organized and existing under and by virtue of the laws of the nation of Canada.
- 3. Plaintiff is informed and believes, and thereupon alleges, that defendant LOOMIS CANADA HOLDING COMPANY, INC. (hereinafter referred to as "LOOMIS") is a corporation organized and existing under and by virtue of the laws of the nation of Canada.
- 4. The true names and capacities, whether individual, corporate, associate or otherwise of the defendants named herein as DOES 1 through 25, inclusive, and each and all of them, by such fictitious names, and TRICOR will advise this Court and seek leave to amend this Complaint when the names and capacities of each such defendant have been ascertained. TRICOR is informed and believes, and thereupon alleges that each said defendant herein designated as a DOE defendant is responsible in some manner for the events and happenings herein referred to, or as hereinafter alleged.
- mentioned, each and every defendant, including DOES I through 25, inclusive, and each of them, was, were, and yet are the agents or employees of the other named defendants and each of them, that in so doing the things herein alleged said defendants, and each and all of them, were acting in within the course and scope of the authority conferred by, and with the consent of, each

TRICOR is informed and believes and thereupon alleges, that at all times herein

other defendant, and all of them jointly.

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EIKST CAUSE OF ACTION

(Breach of Contract)

Against Defendants DHL EXPRESS AND LOOMIS And Does 1 Through 25 6. By this reference, TRICOR herein incorporates each and every allegation of

paragraphs 1 through 8, inclusive of the General Allegations of this Complaint as if the same

were set forth in full herein.

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into an agreement wherein TRICOR agreed to provide any courier services requested of it by the Defendants and the Defendants agreed to pay of the courier services pursuant to agreed upon credit terms of net 30 and subject to the rates in effect at the time of service ("Agreement"). The

On or about March 2, 1984, TRICOR, on the one hand, and Defendants entered

credit terms of net 30 and subject to the rates in effect at the time of service ("Agreement"). The

agreement was terminable at will and subject to rate changes at any time.

8. On or about November 2006, TRICOR gave Defendants notice that as of

November 15, 2006, the rate for services was increasing and the notice detailed the new rates that were in place at that time. A true and correct copy of the November 23, 2006 letter is

- attached as Exhibit "A" and is incorporated by reference.
- 9. Pursuant to the Agreement and the new rates, Defendants requested further work by TRICOR. As such, TRICOR issued written work orders for each request for services

received from the Defendants. Each of these written work orders was known as a Schedule A.

Each Schedule A set forth the work Tricor was to perform on behalf of Defendants. TRICOR

issued numerous Schedule A's to Defendants over their twenty year business relationship.

Defendants failed to pay for the work performed on three Schedule A's, which are attached

hereto and incorporated by reference as Exhibit "B."

10. TRICOR performed all conditions covenants, and promises required of it under

the Agreements and performed all courier services delineated in the Schedule A forms attached

as Exhibit "B."

11. Yet on or about December 2006, and continuing to date, the Defendants and

DOES 1 through 25, and each of them, breached the Agreement by failing to pay \$ 146,193.26

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	\$ 146,193.26 payment, with the sole purpose of creating economic leverage to attempt to
	continued to order courier services from TRICOR with the intention of withholding the
	12. TRICOR is informed and believes that the Defendants knowingly and willfully
	the Agreement. The Defendants refused to pay \$146,193.26 without any explanation.
o	due under the Agreement for courier services ordered and provided to it by TRICOR pursuant t

SECOND CYNSE OF ACTION

As a result, due to the breach of the Agreement by defendants and each of them,

TRICOR has been damaged in the sum of \$ 146,193.26, and more according to proof.

(Account Stated)

Against DHL EXPRESS, LOOMIS And Does I Through 25

- 14. By this reference, TRICOR herein incorporates each and every allegation of paragraphs 1 through 13, inclusive of this Complaint as if the same were set forth in full herein.
 15. Within four years before the commencement of this action, at San Mateo,
 Colifornia on account was stoted in writing by and between TPICOP and defendants the
- California, an account was stated in writing by and between TRICOR and defendants the Defendants and Does 1 through 25 and on such statement a balance of \$ 146,193.26 was found due to TRICOR from said defendants. Defendants and each of them agreed to pay TRICOR said
- balance.

 16. Although demanded of the Defendants, neither the whole nor any part of the
- agreed balance has been paid.

 17. As a result, due to said defendants' breach of the Agreements as aforesaid there is now due, owing, and unpaid from said defendants to TRICOR the sum of \$ 146.193.26, together
- now due, owing, and unpaid from said defendants to TRICOR the sum of \$ 146,193.26, together with interest thereon at the legal rate.
- 18. By reason of the conduct of said defendants, and each of them, TRICOR has incurred attorneys' fees and costs, and will continue to incur said fees and costs to enforce its rights under the Agreements. TRICOR is entitled to reasonable attorneys' fees and costs pursuant to California Civil Code Section 1717.

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negotiate concessions from TRICOR.

FIRST AMENDED COMPLAINT FOR DAMAGES

THIRD CAUSE OF ACTION

(Quantum Meruit)

Against DHL EXPRESS and LOOMIS And Does 1 Through 25

19. By this reference, TRICOR herein incorporates each and every allegation of paragraphs 1 through 18, inclusive, of this Complaint as if the same were set forth in full herein.

20. Within the last two years, at South San Francisco, California, defendants DHL

EXPRESS, LOOMIS, DOES 1 through 25, inclusive and each of them became indebted to TRICOR in for an agreed sum of \$ 146,193.26 for serviced rendered to said defendants, and each of them at the special request and instance of said defendants, and each of them, and no other.

21. Neither the whole nor any party of the above sum ahs been paid, although demand

therefore has been made, and there is now due, owing and unpaid from said defendants, and each of them, to TRICOR the sum of \$146,193.26.

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EOURTH CAUSE OF ACTION

(Negligent Misrepresentation)

Against DHL EXPRESS And Does 1 Through 25

D2. By this reference, TRICOR herein incorporates each and every allegation of paragraphs 1 through 21, inclusive, of this Complaint as if the same were set forth in full herein.

D3. At the time that the Defendants conveyed its promises, representations and assurances that the Defendants would pay for the services rendered, such representations were false, as the Defendants had no intention of making payment for the services rendered by

TRICOR.

24. At the time that the Defendants conveyed its promises, representations, and sesurances that payment would be made, the Defendants had no reasonable grounds for believing such representations to be true, as the Defendants had no intention of making any payment to such representations to be true, as the Defendants had no intention of making any payment to compensate TRICOR for the services it rendered to the Defendants' clients on the Defendants'

FIRST AMENDED COMPLAINT FOR DAMAGES

At the time that the Defendants conveyed its promises, representations and assurances that payment would be made, TRICOR believed the promises, representations, and assurances to be true. Had TRICOR known that the promises, representations, and assurances were false and that the Defendants had no intention of fulfilling its promises, representations and assurances, TRICOR would not have continued to perform services for the Defendants.

26. As a direct, legal and proximate result of the Defendants' fraudulent conduct and false representations and its failure to pay TRICOR for the services rendered, TRICOR has been false representations and its failure to pay TRICOR for the services rendered, TRICOR has been

WHEREFORE, plaintiff TRICOR prays for judgment against Defendants and Does 1

though 25, inclusive as follows:

ON ALL CAUSES OF ACTION

For damages in the sum of \$146,193.26 and more, according to proof.

For prejudgment interest on said sum at the maximum legal rate;

3. For reasonable attorneys' fees;

damaged in an amount in excess of \$ 146,193.26.

4. For costs of suit incurred by TRICOR herein; and

5. For such other and further relief as this court may deem just and proper.

Dated: 11/77/07

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Attorney for Plaintiff
TRICOR AMERICA, INC.

attra Each Nguyen

EXHIBIL Y



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> Ассоилт Ехесийуе Scott Tanaka,

> > Sincerely,

Plus \$30.00 for customs paperwork processing fee.

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in wage, purchased transportation and insurance expenses.

On November 15, 2006 Tricor increased rate for transportation service to offset increases

RICHMOND, BC V7B1K6 CANADA 101 2000 MILLER ROAD

November 23, 2006

COSTOMER #: 001521

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